

July 29, 2009

Mr. Harmon R. Carey  
2018 Silverside Road  
Wilmington DE 19810  
*Pro-se*

Andrea C. Pancino, Esquire  
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Wilmington, DE 19805  
*Counsel for defendants*

**Re: Harmon R. Carey v. Guy A. Disabatino & Associates, et al.**  
**C.A. No.: U407-12-641**

**LETTER OPINION**

Dear Mr. Carey and Counsel:

Pro-se defendant Harmon R. Carey (“The Defendant”) filed a pro-se Motion for Reargument on or about June 5, 2009.

On or about June 11, 2009 this Court issued an order requesting Mr. Silverman or Ms. Pancino to file a brief answer to each ground asserted in Carey’s Motion in ten (10) calendar days. On July 15, upon proper notice from the Court, Defendant’s Counsel filed a Letter Response and/or Answer to Carey’s Motion indicating their sincere apologizes for failure to respond to the Court’s June 11, 2009 Order because they had not received it or were aware of it until July 10, 2009 letter. A response was thereafter filed with chambers by Counsel.

**Carey’s Motion**

In Carey’s Letter Reargument Motion he asserts the Court overlooked six (6) points. The Court has carefully reviewed and scrutinized those six (6) points and incorporates them by

reference into the findings of facts and conclusions of this letter opinion. Much of the issues Carey asserts are factual issues that either are not relevant, and/or have already been addressed in the Court's Memorandum Opinion dated June 5, 2009 in its Finding Facts, Procedural History and/or Conclusions of Law. In short, after a careful review of his Motion, the Court finds that Carey has not set any new factual or legal issues in his pro-se Reargument Motion which has already not been addressed by the Court. As such, these points are not factually or legally dispositive in order for the Court to invoke the granting of a Reargument Motion under Court of Common Pleas Civil Rule 59(e). As Defendants have pointed out, Carey has attempted to provide the Court "with additional assertions of 'fact' that are not relevant and/or were not properly presented to the Court on the record during the trial." All six points have either been addressed by this Court, or are simply not relevant. DRE 401; 403.

#### The Law

"The law is well settled that a Motion for Reargument is a proper device for seeking consideration by the trial court of its Findings of Fact, Conclusions of Law or a Judgment after a Bench Trial." *Ceg Hessler Inc. v. Farrell*, 260 A.2nd 701, Del. Super., (1969). "A Rule 59(e) Motion is within the sound discretion of the Court." *Brown v. Weiler*, 719 A.2nd 49, Del. Super., (1998); *Orzechowski v. Sherman*, 1998 Del. C.P. LEXIS 16, C.A. No. 97-03-106 (September 8, 1998), Welch, J.

#### Opinion and Order

With regards to the case law cited by the defendants, Carey was already provided a copy of the applicable case law at trial. *C. Abeggan v. Berry Refrigeration, et. al.*, Del. Super., C.A. No. 03-08-016, Scott, J. (Dec. 2, 2005) (Mem. Op.) In this Superior Court's recent decision cited therein, *Roberts v. Daystar Sills, Inc.*, Del. Super., C.A. No. 05-C-04-189 CLS, both of

which are dispositive and require the standard of a care applicable for a professional be established through expert testimony when Plaintiff filed an action at law for negligence, as in the instance of this case, against co-defendants.

It is therefore ordered that Defendant's Motion for Reargument under Court of Common Pleas Civil Rule 59(e) is therefore **DENIED**. Each party shall bear their own cost.

**IT IS SO ORDERED** this 28<sup>th</sup> day of July, 2009.

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Honorable John K. Welch  
Judge

JKW/ks

cc: Ms. Tamu White, Civil Case Manager  
File